

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 RAMON GUEVARA,

7 Plaintiff,

8 vs.

9 SAN FRANCISCO MARRIOTT/MOSCONE  
10 CENTER,

11 Defendant.

Case No: C 10-5347 SBA

**ORDER DISMISSING ACTION**

12 On September 27, 2010, Plaintiff, who is proceeding pro se, commenced this action for  
13 wrongful termination in the Superior Court of California, County of San Francisco, against his  
14 former employer Defendant San Francisco Marriott/Moscone Center. On November 24, 2010,  
15 Defendant removed Plaintiff's action to this Court on federal question and diversity jurisdiction  
16 grounds. Dkt. 1.

17 On December 1, 2010, Defendant filed a Motion to Dismiss Plaintiff's Complaint under  
18 Federal Rule of Civil Procedure 12(b)(6) ("Motion to Dismiss"). Dkt. 4. The hearing on the  
19 Motion to Dismiss is scheduled for March 15, 2011. Under Civil Local Rule 7-3(a), any  
20 opposition or statement of non-opposition by Plaintiff was due by February 22, 2011, which is  
21 twenty-one days prior to the March 15, 2011 hearing date.<sup>1</sup> To date, Plaintiff has not filed an  
22 opposition or a statement of non-opposition to the Motion to Dismiss. The Court's Standing  
23 Orders warn that "[t]he failure of the opposing party to file a memorandum of points and  
24 authorities in opposition to any motion shall constitute a consent to the granting of the motion."

25 The Ninth Circuit has held that the failure to file an opposition to a motion to dismiss is  
26 grounds for granting the motion. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); see

---

27 <sup>1</sup> Civil Local Rule 7-3(b) provides that "[i]f the party against whom the motion is  
28 directed does not oppose the motion, that party must file with the Court a Statement of  
Nonopposition within the time for filing and serving any opposition."

---

1 Fed.R.Civ.P. 41(b). In Ghazali, the court noted that in exercising its discretion to dismiss the  
2 action, the district court is “required to weigh several factors: ‘(1) the public’s interest in  
3 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
4 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
5 and (5) the availability of less drastic sanctions.’” Id. (quoting Henderson v. Duncan, 779 F.2d  
6 1421, 1423 (9th Cir. 1986)); Fed. R. Civ. Proc. 41(b). Upon balancing the Ghazali factors  
7 under the facts of this case, the Court finds that dismissal is warranted.

8       The first and second factors both favor dismissal. Under Civil Local Rule 7-3(a),  
9 Plaintiff was obligated to file his opposition to Defendant’s Motion to Dismiss by no later  
10 February 22, 2011. In violation of that rule, he failed to do so. Such non-compliance  
11 inherently delays resolution of the case and inures to the detriment of the public. See  
12 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (“It is incumbent upon the Court to  
13 manage its docket without being subject to routine noncompliance of litigants[.]”); Yourish v.  
14 California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing court’s need to control its  
15 own docket); see also Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (non-  
16 compliance with a court’s order diverts “valuable time that [the court] could have devoted to  
17 other major and serious criminal and civil cases on its docket.”). The first two Ghazali factors  
18 strongly support dismissal.

19       The third factor, the risk of prejudice to the Defendant, is related to the strength of the  
20 Plaintiff’s excuse for the default. See Yourish, 191 F.3d at 991. Here, Plaintiff has offered no  
21 “excuse” for his conduct nor is any apparent from the record. Therefore, this factor also  
22 weighs strongly in favor of dismissal. See id.; Ghazali, 46 F.3d at 54.

23       The fourth factor, which favors disposition of cases on the merits, by definition, weighs  
24 against dismissal. Pagtalunan, 291 F.3d at 643 (“Public policy favors disposition of cases on  
25 the merits. Thus, this factor weighs against dismissal.”).

26       As to the final factor, the Court has already considered less drastic alternatives to  
27 dismissal. As noted, the Court’s Standing Orders warn that as a consequence of a party’s  
28 failure to oppose a motion, the Court will construe such inaction as a consent to the motion.

1 “[A] district court’s warning to a party that failure to obey the court’s order will result in  
2 dismissal can satisfy the ‘consideration of [less drastic sanctions]’ requirement.” Ferdik, 963  
3 F.2d at 1262.

4 In sum, the Court concludes that four of the five relevant factors weigh strongly in favor  
5 of dismissing this action in its entirety. Id. (affirming dismissal where three factors favored  
6 dismissal, while two factors weighed against dismissal). Accordingly,

7 IT IS HEREBY ORDERED THAT Defendant’s unopposed Motion to Dismiss (Docket  
8 4) is GRANTED. The March 15, 2011 hearing on the Motion to Dismiss is VACATED. The  
9 Clerk shall close the file and terminate all pending matters and deadlines.

10 IT IS SO ORDERED.

11 Dated: March 7, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 RAMON GUEVARA et al,

5 Plaintiff,

6 v.

7 SAN FRANCISCO MARRIOTT /MOSCONE  
8 CENTER et al,

9 Defendant.  
10 \_\_\_\_\_/

Case Number: CV10-05347 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on March 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 Ramon Guevara  
19 632 Sweeny Street  
20 San Francisco, CA 94134

21 Dated: March 8, 2011

Richard W. Wieking, Clerk

22  
23 By: LISA R CLARK, Deputy Clerk  
24  
25  
26  
27  
28